IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 25414 of 2007

For Approval and Signature:

HONOURABLE MR.JUSTICE RAVI R.TRIPATHI

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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MEET RAMJIBHAI PATEL & 11 - Petitioner(s)
Versus
STATE OF GUJARAT & 3 - Respondent(s)

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Appearance :
MR PS CHAMPANERI for Petitioner(s) : 1 - 12.
MR.SATYAM CHHAYA, ASST GOVERNMENT PLEADER for Respondent(s) : 1,
DS AFF.NOT FILED (N) for Respondent(s) : 1,
NOTICE SERVED BY DS for Respondent(s) : 2 - 4.

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CORAM : HONOURABLE MR.JUSTICE RAVI R.TRIPATHI

Date : 12/10/2007

ORAL JUDGMENT

Heard Mr.Champaneri, learned advocate for the petitioners. **Rule**. Mr.Satyam Chhaya, learned Assistant Government Pleader waives service of rule.

At the request of the learned advocates the matter is taken up for final hearing.

2. The petitioners are aggrieved by order passed by the Secretary (Appeal) in Revision Application No.10 of 2006 dated 18th April 2007, whereby the Revision Application was partly allowed and the Collector was directed to process the application of the applicants for grant of Non-Agricultural (NA) Permission except Survey No.497/1 and 498.

The petitioners are the original owners of Survey No.497/1 only. Therefore, the petition is filed only challenging the order of the Secretary (Appeal) only to the extent it applies to Survey No.497/1. The petitioners have prayed as under:

> “7(B) Your Lordships may be pleased to issue a writ of mandamus or certiorari or a writ in the nature of mandamus or certiorari or any other appropriate writ, order or direction to quash and set aside the order dated 31st August 2006 passed by the Collector, Ahmedabad prohibiting the construction on the land of Survey No.497/1

and further be pleased to issue appropriate writ, order or direction to the Collector to consider the petitioners' application for NA use under sections 66 and 67 of the Bombay Land Revenue Code read with Rules 100 and 101 of the Bombay Land Revenue Rules;”

3. Learned advocate Mr.Champaneri submitted that as was undertaken before this Court on the last occasion, the petitioners have already made an application for being impleaded as party respondents in Revision Application No.184 of 2006 pending before the Gujarat Revenue Tribunal. He further states that the said application is already granted and he is impleaded as party respondent. The learned advocate for the petitioners also informs the Court that the said Revision application is admitted subject to the point of limitation. He requests that if the Hon'ble Tribunal is directed to decide that Revision application expeditiously, preferably in a time frame and during that period on the petitioners paying the amount of premium subject to final outcome of that Revision Application, with a rider that the amount paid by the petitioners towards premium be deposited in Fixed Deposit and in the event the

petitioners succeed, the petitioners shall be at liberty to receive that amount with interest so that no interest loss is caused to the petitioners on amount of premium, interest of justice will be served.

4. Heard learned Assistant Government Pleader Mr.Satyam Chhaya. Mr.Chhaya submitted that pendency of the Revision application before the Gujarat Revenue Tribunal, which is admitted subject to the point of limitation and the outcome of that Revision Application is likely to change the scenario, therefore, if the consideration of the application of the petitioners for grant of NA Permission for land bearing Survey No.497/1 is deferred till then, it will be in fitness of things.

5. Taking into consideration the rival submissions of the learned advocates it is deemed fit that the Hon'ble Tribunal be directed and is directed as under:

(i) The Hon'ble Tribunal to decide the

Revision Application No.184 of 2006 as expeditiously as possible, preferably by 31st March 2008.

(ii) The authorities shall determine the amount of premium determinable on the date of sale deed, Annexure 'A', i.e. 01.09.2005 and intimate the said amount to the petitioners as expeditiously as possible, preferably by 17th December 2007. The amount so communicated shall be deposited with interest, payable from the date of sale deed till the actual date of payment, at the rate of 12% per annum, by the petitioners within three weeks from the date of communication of the amount.

(iii) The authorities are directed to deposit that amount of premium in a Fixed Deposit Scheme of a nationalised Bank earning maximum interest for minimum term, which shall be reimbursable to the petitioner in the event the petitioners succeed.

(iv) The authorities shall consider the application of the petitioners for grant of Non-Agricultural Use Permission for land baring Survey No.497/1 irrespective of pendency of Revision Application No.184 of 2006.

6. At the request of Mr.Satyam Chhaya, learned AGP it is clarified that the present judgement does not deal with the merits of the matter. Merits of the matter will be decided by the Hon'ble Tribunal while considering the pending Revision Application.

The petition is allowed to the aforesaid extent. Rule is made absolute. No order as to cost.

Office is directed to send writ of this judgement to the Hon'ble Gujarat Revenue Tribunal for its information. Direct service is permitted.

(RAVI R. TRIPATHI, J.)

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